

2 SSB 5845 - S AMD 121

3 By Senators Fraser, Costa, Long and Hargrove

4 ADOPTED 03/14/01

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. (1) The legislature recognizes that the  
8 individualized treatment required for constitutional civil commitment  
9 includes the realistic possibility of release to a less restrictive  
10 alternative than total confinement in appropriate cases. The  
11 legislature finds that most persons civilly committed under chapter  
12 71.09 RCW who become eligible for release to a less restrictive  
13 alternative do not have appropriate housing and that the lack of  
14 housing may unduly restrict the person's ability to move to a less  
15 restrictive alternative placement. The legislature also finds that  
16 these facilities are essential public facilities, are subject to public  
17 protest upon siting, and that some cities and counties have imposed  
18 moratoriums on zoning and permitting processes. The legislature  
19 further finds that this reaction hampers its ability and the ability of  
20 the department of social and health services to comply with  
21 constitutional and statutory requirements and with court orders to  
22 create housing for less restrictive alternative placements. The  
23 legislature, therefore, intends to provide statewide guidance for the  
24 siting of less restrictive alternative housing for persons placed on  
25 less restrictive alternative placements under chapter 71.09 RCW.

26 (2) It is the intent of the legislature to:

27 (a) Enhance public safety and maximize the potential for successful  
28 treatment of sexually violent predators through the tightly managed use  
29 of less restrictive alternatives in community-based secure community  
30 transition facilities;

31 (b) Maximize the safety of communities in which secure community  
32 transition facilities are located and ensure public input into secure  
33 community transition facilities by enabling community participation in  
34 decisions involving these essential public facilities;

35 (c) Comply with federal court orders and require the siting of less  
36 restrictive alternative housing facilities and to preclude the

possibility that the department of social and health services would be unable to site a facility due to local moratoriums and requirements;

(d) Require the department to work with local jurisdictions to address specific local concerns and develop zoning requirements and development regulations that balance the need for siting with public safety; and

(e) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the persons released to a less restrictive alternative in a secure community transition facility, and by establishing minimum standards for the siting and operation of secure community transition facilities.

(3) The legislature finds that community participation in siting and oversight is vital to the success of secure community transition facilities for less restrictive alternatives.

**Sec. 2.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

~~(1) ("Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.~~

~~(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.)~~

"Department" means the department of social and health services.

(2) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement.

(3) "Likely to engage in predatory acts of sexual violence" means that the person more probably than not will engage in such acts. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(4) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(5) "Predatory" means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

~~((+5+))~~ (6) "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

~~((+6+))~~ (7) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, and public libraries.

(8) "Secretary" means the secretary of social and health services or the secretary's designee.

(9) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter. A secure facility is a facility that provides supervision and sex offender treatment services in a total confinement setting. Secure facilities include the special commitment center and any similar facility for males or females designated as a secure facility by the secretary.

(10) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision, security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to any step-down facility and any community-based housing established under this chapter and operated by the secretary or under contract with the secretary.

(11) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time

1 prior to July 1, 1990, that is comparable to a sexually violent offense  
2 as defined in (a) of this subsection, or any federal or out-of-state  
3 conviction for a felony offense that under the laws of this state would  
4 be a sexually violent offense as defined in this subsection; (c) an act  
5 of murder in the first or second degree, assault in the first or second  
6 degree, assault of a child in the first or second degree, kidnapping in  
7 the first or second degree, burglary in the first degree, residential  
8 burglary, or unlawful imprisonment, which act, either at the time of  
9 sentencing for the offense or subsequently during civil commitment  
10 proceedings pursuant to chapter 71.09 RCW, has been determined beyond  
11 a reasonable doubt to have been sexually motivated, as that term is  
12 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
13 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
14 to commit one of the felonies designated in (a), (b), or (c) of this  
15 subsection.

16 ~~((7) "Less restrictive alternative" means court-ordered treatment~~  
17 ~~in a setting less restrictive than total confinement.~~

18 ~~(8) "Secretary" means the secretary of social and health services~~  
19 ~~or his or her designee.))~~

20 (12) "Sexually violent predator" means any person who has been  
21 convicted of or charged with a crime of sexual violence and who suffers  
22 from a mental abnormality or personality disorder which makes the  
23 person likely to engage in predatory acts of sexual violence if not  
24 confined in a secure facility.

25 (13) "Step-down facility" means any secure community transition  
26 facility that provides residence for more than five persons.

27 NEW SECTION. Sec. 3. A new section is added to chapter 71.09 RCW  
28 to read as follows:

29 (1) The secretary shall adopt rules that balance the average  
30 response time of emergency services to the general area of the proposed  
31 facility against the proximity of the proposed site to risk potential  
32 activities and facilities in existence at the time the site is listed  
33 for consideration.

34 (2) In balancing the competing criteria of proximity and response  
35 time the rule shall endeavor to achieve an average law enforcement  
36 response time not greater than five minutes and in no case shall the  
37 rule permit location of a facility adjacent to, immediately across a  
38 street or parking lot from, or within the line of sight of a risk

1 potential activity or facility in existence at the time a site is  
2 listed for consideration. "Within the line of sight" means that it is  
3 possible to reasonably visually distinguish and recognize individuals.

4 (3) The rule shall require that great weight be given to sites that  
5 are the farthest removed from any risk potential activity.

6 (4) The rule shall specify how distance from the location is  
7 measured and any variations in the measurement based on the size of the  
8 property within which a proposed facility is to be located.

9 (5) The rule shall establish a method to analyze and compare the  
10 criteria for each site in terms of public safety and security, site  
11 characteristics, and program components. In making a decision  
12 regarding a site following the analysis and comparison, the secretary  
13 shall give priority to public safety and security considerations. The  
14 analysis and comparison of the criteria are to be documented and made  
15 available at the public hearings prescribed in section 7 of this act.

16 (6) The rule shall contain a schedule of monetary penalties for  
17 contractors operating secure community transition facilities, not to  
18 exceed the total compensation set forth in the contract, and include  
19 provisions for termination of all contracts with a service provider  
20 that has repeated or serious violations of section 9 of this act.

21 NEW SECTION. **Sec. 4.** By December 1, 2001, the secretary of the  
22 department of social and health services shall determine and report to  
23 the legislature whether there is a significant group of potential  
24 locations that are outside of a five-minute law enforcement response  
25 time zone that are more than two miles from any risk potential  
26 activities and whether, in the secretary's judgment, the legislature  
27 should require the rule to be revised to permit consideration of these  
28 properties.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.09 RCW  
30 to read as follows:

31 The secretary shall establish criteria for the siting of secure  
32 community transition facilities which shall include at least the  
33 following minimum requirements:

34 (1) Any real property listed for consideration for the location of  
35 or use as a secure community transition facility must meet all of the  
36 following criteria:

1 (a) The proximity and response time criteria established under  
2 section 3 of this act;

3 (b) The site or building is available for lease for the anticipated  
4 use period or for purchase;

5 (c) Security monitoring services and appropriate back-up systems  
6 are available and reliable;

7 (d) Appropriate mental health and sex offender treatment providers  
8 must be available within a reasonable commute; and

9 (e) Appropriate permitting for a secure community transition  
10 facility must be possible under the zoning code of the local  
11 jurisdiction.

12 (2) For sites which meet the criteria of subsection (1) of this  
13 section, the department shall analyze and compare the criteria in  
14 subsections (3) through (5) of this section using the method  
15 established in section 3 of this act.

16 (3) Public safety and security criteria shall include at least the  
17 following:

18 (a) Whether limited visibility between the facility and adjacent  
19 properties can be achieved prior to placement of any person;

20 (b) The distance from, and number of, risk potential activities and  
21 facilities, as measured using the rules adopted under section 3 of this  
22 act;

23 (c) The existence of or ability to establish barriers between the  
24 site and the risk potential facilities and activities;

25 (d) Suitability of the buildings to be used for the secure  
26 community transition facility with regard to existing or feasibly  
27 modified features; and

28 (e) The availability of electronic monitoring that allows a  
29 resident's location to be determined with specificity.

30 (4) Site characteristics criteria shall include at least the  
31 following:

32 (a) Reasonableness of rental, lease, or sale terms including length  
33 and renewability of a lease or rental agreement;

34 (b) Traffic and access patterns associated with the real property;

35 (c) Feasibility of complying with zoning requirements within the  
36 necessary time frame; and

37 (d) A contractor or contractors are available to install, monitor,  
38 and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components; and

(d) In facilities housing five or fewer residents, a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff during normal sleeping hours. In no case shall all staff on a shift be persons classified as entry or trainee level staff.

(6) Unless otherwise ordered by the court, at least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the site for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident.

(7) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services.

**NEW SECTION. Sec. 6.** A new section is added to chapter 71.09 RCW to read as follows:

Security systems for secure community transition facilities housing five or fewer residents shall meet the following minimum qualifications:

(1)(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(2) The system must include personal panic devices for all staff.

(3) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(4) The department shall issue photo-identification badges to all staff which must be worn at all times.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 71.09 RCW  
2 to read as follows:

3        (1) Whenever the department of social and health services operates,  
4 or the secretary enters a contract to operate, a secure community  
5 transition facility, the secure community transition facility may be  
6 operated only after the public notification and opportunities for  
7 review and comment as required by this section.

8        (2) The secretary shall establish a process for early and  
9 continuous public participation in establishing or relocating secure  
10 community transition facilities. The process shall include, at a  
11 minimum, public meetings in the local communities affected, as well as  
12 opportunities for written and oral comments, in the following manner:

13        (a) If there are more than three sites initially selected as  
14 potential locations and the selection process by the secretary or a  
15 service provider reduces the number of possible sites for a secure  
16 community transition facility to no fewer than three, the secretary or  
17 the chief operating officer of the service provider shall notify the  
18 public of the possible siting and hold at least two public hearings in  
19 each community where a secure community transition facility may be  
20 sited.

21        (b) When the secretary or service provider has determined the  
22 secure community transition facility's location, the secretary or the  
23 chief operating officer of the service provider shall hold at least one  
24 additional public hearing in the community where the secure community  
25 transition facility will be sited.

26        (c) When the secretary has entered negotiations with a service  
27 provider and only one site is under consideration, then at least two  
28 public hearings shall be held.

29        (d) To provide adequate notice of, and opportunity for interested  
30 persons to comment on, a proposed location, the secretary or the chief  
31 operating officer of the service provider shall provide at least  
32 fourteen days' advance notice of the meeting to all newspapers of  
33 general circulation in the community, all radio and television stations  
34 generally available to persons in the community, any school district in  
35 which the secure community transition facility would be sited or whose  
36 boundary is within two miles of a proposed secure community transition  
37 facility, any library district in which the secure community transition  
38 facility would be sited, local business or fraternal organizations that  
39 request notification from the secretary or agency, and any person or



1 property owner within a one-half mile radius of the proposed secure  
2 community transition facility. Before initiating this process, the  
3 department of social and health services shall contact local government  
4 planning agencies in the communities containing the proposed secure  
5 community transition facility. The department of social and health  
6 services shall coordinate with local government agencies to ensure that  
7 opportunities are provided for effective citizen input and to reduce  
8 the duplication of notice and meetings.

9 (3) Except as otherwise provided by law, this section applies only  
10 to secure community transition facilities sited after the effective  
11 date of this act.

12 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.09 RCW  
13 to read as follows:

14 (1) The secretary shall develop a process with local governments  
15 that allows each community in which a secure community transition  
16 facility is located to establish operational advisory boards for the  
17 secure community transition facilities. The department of social and  
18 health services may conduct community awareness activities to publicize  
19 this opportunity. The operational advisory boards developed under this  
20 section shall be implemented following the decision to locate a secure  
21 community transition facility in a particular community.

22 (2) The operational advisory boards may review and make  
23 recommendations regarding the security and operations of the secure  
24 community transition facility and conditions or modifications necessary  
25 with relation to any person who the secretary proposes to place in the  
26 secure community transition facility.

27 (3) The operational advisory boards, their members, and any agency  
28 represented by a member shall not be liable in any cause of action as  
29 a result of its recommendations unless the advisory board acts with  
30 gross negligence or bad faith in making a recommendation.

31 (4) Members of a board shall be reimbursed for travel expenses as  
32 provided in RCW 43.03.050 and 43.03.060.

33 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW  
34 to read as follows:

35 (1) The secretary shall adopt a violation reporting policy for  
36 persons conditionally released to less restrictive alternative  
37 placements in secure community transition facilities. The policy shall

1 require written documentation by the department of social and health  
2 services and service providers of all violations of conditions set by  
3 the department of social and health services, the department of  
4 corrections, or the court and establish criteria for returning a  
5 violator to the special commitment center or a step-down facility. Any  
6 conditionally released person who commits a serious violation of  
7 conditions shall be returned to the special commitment center and the  
8 court shall be notified immediately and the court shall initiate  
9 proceedings under RCW 71.09.098 to revoke or modify the less  
10 restrictive alternative placement unless the department makes a good  
11 cause showing why proceedings should not be initiated. For the  
12 purposes of this section, "serious violation" includes but is not  
13 limited to:

- 14 (a) The commission of any criminal offense;
- 15 (b) Any unlawful use or possession of a controlled substance; and
- 16 (c) Any violation of conditions targeted to address the person's  
17 documented pattern of offense that increases the risk to public safety.

18 When a person is released to a less restrictive alternative in a  
19 secure community transition facility under this chapter and is under  
20 the supervision of the department of corrections, notice of any  
21 violation of the person's conditions of release must also be made to  
22 the department of corrections.

23 (2) Whenever the secretary contracts with a service provider to  
24 operate a secure community transition facility, the contract shall  
25 include a requirement that the service provider must report to the  
26 department of social and health services any known violation of  
27 conditions committed by any resident of the secure community transition  
28 facility.

29 (3) The secretary shall document in writing all violations,  
30 penalties, actions by the department of social and health services to  
31 remove persons from a secure community transition facility, and  
32 contract terminations. The secretary shall give great weight to a  
33 service provider's record of violations, penalties, actions by the  
34 department of social and health services or the department of  
35 corrections to remove persons from a secure community transition  
36 facility, and contract terminations in determining to execute, renew,  
37 or renegotiate a contract with a service provider.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 36.70A  
2    RCW to read as follows:

3        (1) On or before September 1, 2002, the legislative authority of  
4    each county in the state shall adopt a countywide planning policy to  
5    establish the process for siting and to provide for an equitable  
6    distribution of secure community transition facilities as defined in  
7    RCW 71.09.020 within the county and the cities located in whole or in  
8    part within the county. The countywide planning policy required by  
9    this section shall be adopted in cooperation with the cities located in  
10   whole or in part within the county. Counties planning under the growth  
11   management act may integrate the planning policy required in the  
12   section with their growth management act planning process.

13        (2) The department of social and health services shall be notified  
14   by each county of its intent to begin the countywide planning policy  
15   process required by this section and the department shall be invited to  
16   participate in this process.

17        (3) The countywide planning policy required by this section shall,  
18   at a minimum, address the following:

19        (a) The location of existing secure community transition  
20   facilities;

21        (b) The social, economic, and other impacts of the existing secure  
22   community transition facilities on the communities in which they are  
23   located and the incremental impacts of siting additional secure  
24   community transition facilities in these communities;

25        (c) A proposed allocation for the siting of future secure community  
26   transition facilities among the county and the cities located in whole  
27   or in part within the county; and

28        (d) Coordination of development regulations, including but not  
29   limited to zoning regulations and design standards, to ensure that the  
30   proposed allocation of future secure community transition facilities  
31   can be achieved.

32        (4) The countywide planning policy required by this section shall:

33        (a) Be consistent with the siting criteria established pursuant to  
34   sections 3 and 5 through 7 of this act;

35        (b) Require any local conditional use permit or other development  
36   application process not to exceed sixty days in length and provide for  
37   an appeal process.

38        (5) Within six months of the date the countywide planning policy  
39   required by subsection (1) of this section is adopted, the county and

1 each city within the county shall adopt development regulations  
2 implementing the policy adopted under this section through appropriate  
3 revisions to their comprehensive plan and development regulations.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70 RCW  
5 to read as follows:

6 Counties planning under this chapter must adopt a countywide  
7 planning policy for the siting of secure community transition  
8 facilities that complies with the timelines and requirements of section  
9 10 of this act.

10 **Sec. 12.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to  
11 read as follows:

12 (1) The comprehensive plan of each county and city that is planning  
13 under this chapter shall include a process for identifying and siting  
14 essential public facilities. Essential public facilities include those  
15 facilities that are typically difficult to site, such as airports,  
16 state education facilities and state or regional transportation  
17 facilities as defined in RCW 47.06.140, state and local correctional  
18 facilities, solid waste handling facilities, and in-patient facilities  
19 including substance abuse facilities, mental health facilities, ((and))  
20 group homes, and secure community transition facilities as defined in  
21 RCW 71.09.020.

22 (2) The office of financial management shall maintain a list of  
23 those essential state public facilities that are required or likely to  
24 be built within the next six years. The office of financial management  
25 may at any time add facilities to the list. No local comprehensive  
26 plan or development regulation may preclude the siting of essential  
27 public facilities.

28 NEW SECTION. **Sec. 13.** A new section is added to chapter 71.09 RCW  
29 to read as follows:

30 Nothing in this act shall operate to restrict a court's authority  
31 to make less restrictive alternative placements to a committed person's  
32 individual residence. A court-ordered less restrictive alternative  
33 placement to a committed person's individual residence is not a less  
34 restrictive placement to a secure community transition facility.

